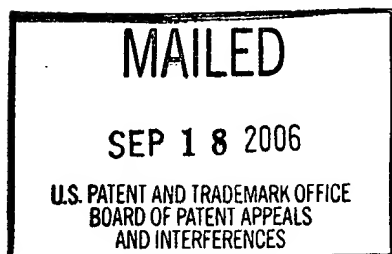


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**



Ex parte STEVE A. PLATT

Appeal No. 2006-0848  
Application No. 09/981,231

ON BRIEF

Before JERRY SMITH, SAADAT, and MACDONALD, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests that we reconsider that portion of our decision of May 19, 2006 wherein we sustained the following rejections:

1. The rejection of claims 18, 19, 26, and 71 as being anticipated by Abe (4,311,434) under 35 U.S.C. § 102.
2. The rejection of claims 18 and 19 as being anticipated by Willis (6,278,198) under 35 U.S.C. § 102.
3. The rejection of claims 27 and 28 as being unpatentable over the teachings of Abe in view of Barnes (4,374,631) under 35 U.S.C. § 103.

4. The rejection of claims 39, 41, and 43 as being unpatentable over the teachings of Salter (4,110,631) in view of Abe under 35 U.S.C. § 103.

With respect to the first rejection noted above, appellant argues that Abe fails to fully meet the claimed invention because the Abe teaching of placing a wind powered generator on rails is not placing a wind powered generator within a carriage as claimed. Appellant also argues that Abe fails to disclose a wind powered generator that can be removed from within the carriage after the carriage has been lowered as claimed [Request for rehearing, pages 5-6].

We are not persuaded of error in the decision by this argument. The question revolves around the interpretation of the phrase "within the carriage." We interpret the phrase as used in the claims as requiring only that the wind powered generator be contained within the limits of the carriage. Since the rails 11 in Abe are within the boundaries of the carriage, and since the wind powered generator is seated upon these rails, we find that the wind powered generator in Abe is removably placed "within the carriage" and can be removed from "within the carriage" as claimed.

With respect to the second rejection noted above, appellant argues that Willis fails to fully meet the claimed

invention because the Willis teaching of placing a wind powered generator on a carriage is not placing a wind powered generator within a carriage as claimed. Appellant also argues that Willis fails to disclose a wind powered generator that can be removed from within the carriage after the carriage has been lowered as claimed [Request for rehearing, pages 6-7].

We are not persuaded of error in the decision by this argument. As explained above, we interpret the phrase as used in the claims as requiring only that the wind powered generator be contained within the limits of the carriage. Since the wind powered generator in Willis is seated within the boundaries of the carriage [Figures 8-12], we find that the wind powered generator in Willis is removably placed "within the carriage" and can be removed from "within the carriage" as claimed.

With respect to the third rejection noted above, appellant essentially argues that claims 27 and 28 are allowable based on their dependency from claim 18 [Request for rehearing, pages 7-8].

We are not persuaded of error in the decision by this argument. Since we have found no error in sustaining the rejection of claim 18 based on Abe and Willis for reasons discussed above, appellant's argument in the Request for rehearing fails to persuade us of error in the original decision.

With respect to the fourth rejection noted above, appellant argues that moving the generator of Salter upwind of the spars would render Salter unable to generate electricity [Request for rehearing, pages 8-10].

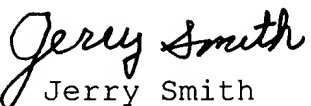
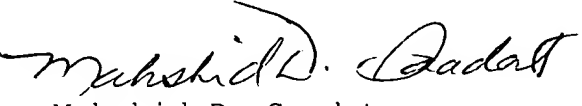
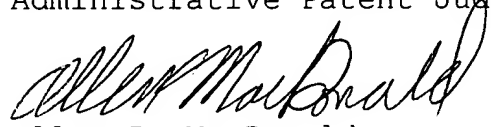
We will not consider this argument in the Request for rehearing because appellant failed to make this argument in the original brief. Appellant's argument in the brief focused on appellant's belief that the movement of the generator in Salter upwind of the spars would render the airfoils of Salter less efficient. We sustained the examiner's rejection because we found that the efficiency of the airfoil itself was not affected by whether the generator is located upwind or downwind of the spars. The facts argued now by appellant as to why the proposed modification would not work were not presented to the examiner in the brief. A new argument advanced in a request for rehearing but not advanced in the brief or reply brief is not properly before the Board because an argument advanced in such a manner has not afforded the examiner an opportunity to respond to the new argument. Ex parte Hindersinn, 177 USPQ 78 (Bd. App. 1971).

We have carefully considered the arguments raised by appellant in the Request for rehearing, but we find no errors in our original decision. We have granted appellant's request to the extent that we have reconsidered our decision of May 19,

2006, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

REHEARING DENIED

	)	
Jerry Smith	)	
Administrative Patent Judge	)	
	)	
	)	BOARD OF PATENT
Mahshid D. Saadat	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
Allen R. MacDonald	)	
Administrative Patent Judge	)	

JS/eld

Appeal No. 2006-0848  
Application No. 09/981,231

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